

CHARLES A. DYER, Esq., State Bar #47718
DYER & WHITE, LLP
800 Oak Grove, Suite 200
Menlo Park, CA 94025
Tele: (650) 325-7000
FAX: (650) 325-3116
E-Mail: cdyer@dyer-white.com

Attorneys for Defendants
Laura E. Innes and Ronald F. Garrity

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HARRIS L. WINNS,

Plaintiff,

vs.

BLAKELY SOLOKOFF TAYLOR & ZAFFMAN,
LLP, ANTHONY INTIL, CANDY MIELKE,
JIM SALTER, MICHAEL MALLIE, JOHN P.
WARD, ED TAYLOR, DAN DEVOS, DIANE
ROBSON, LESTER VINCENT, STEVE
ZELMAN, DAVE MONTOYA, KAREN WILSON,
TAREK FAHMI, LAURA E. INNES, RONALD
F. GARRITY, CHARLES WALL,

Defendants.

) Case No. C08 02622 JW

)
) **REQUEST FOR JUDICIAL**
) **NOTICE IN SUPPORT OF**
) **DEFENDANTS INNES &**
) **GARRITY'S MOTION TO**
) **STRIKE PLAINTIFF'S**
) **COMPLAINT PURSUANT TO**
) **CALIFORNIA CIVIL PROCEDURE**
) **CODE §425.16**

) Date: November 3, 2008
) Time: 9:00 a.m.
) Dept: Courtroom 8, 4th Floor
) Judge: James Ware

In support of their Special Motion to Strike Causes of Action for Malicious
Prosecution and Abuse of Process in Plaintiff's Complaint pursuant to California Civil Procedure
Code §425.16, filed concurrently herewith, Defendants LAURA E. INNES and RONALD F.
GARRITY ("Defendants") respectfully request that the Court take judicial notice pursuant to
Federal Rule of Evidence 201 of the following:

1. Temporary Restraining Order and Order to Show Cause Why Preliminary

1 Injunction Should Not Be Issued, issued by the Superior Court of California for
2 the County of Santa Clara in the matter of Blakely Sokoloff Taylor & Zafman,
3 LLP v. Harris Winns, Case No. CV 806829. A true and correct copy of the
4 Temporary Restraining Order is attached hereto as Exhibit A.

- 5 2. The Stipulated Order for Injunction, signed by Plaintiff Winns and his attorney
6 of record, entered on May 6, 2002 in the matter of Blakely Sokoloff Taylor &
7 Zafman, LLP v. Harris Winns, Santa Clara County Superior Court Case No. CV
8 806829. A true and correct copy of the Stipulated Order for Injunction is
9 attached hereto as Exhibit B.

10 Federal Rules of Evidence Rule 201(b)(2) provides that judicial notice may be taken
11 of facts capable of accurate and ready determination by resort to sources whose accuracy cannot
12 be reasonably questioned.

13 The record of state court proceeding is a source whose accuracy cannot reasonably be
14 questioned, and judicial notice may be taken of court records. [Citations] (Reyes v. Hamlet,
15 2008 U.S. Dist. LEXIS 63239, 10 (E.D., Cal. July 23, 2008).)

16
17 DATED: September 4, 2008

DYER & WHITE LLP

18
19 By s/CHARLES A. DYER
20 CHARLES A. DYER
21 Attorneys for Defendants
22 **LAURA E. INNES and RONALD**
23 **F. GARRITY**
24
25
26
27
28

CERTIFICATE OF SERVICE**STATE OF CALIFORNIA, COUNTY OF SAN MATEO:**

I am a citizen of the United States; my business address is 800 Oak Grove Avenue, Suite 200, Menlo Park, California 94025. I am employed in the County of San Mateo where this mailing occurs. I am over the age of eighteen (18) years and not a party to the within cause. I served the within:

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS INNES & GARRITY'S SPECIAL MOTION TO STRIKE PLAINTIFF'S COMPLAINT PURSUANT TO CALIFORNIA CIVIL PROCEDURE CODE §425.16

on the following person(s) on the date set forth below:

☒

(VIA MAIL - CCP §§ 1013(a), 2015.5) By placing a true copy thereof enclosed in a sealed envelope(s), addressed as below, and placing each for collection and mailing on that date following ordinary business practices. I am readily familiar with my firm's business practice of collection and processing of correspondence for mailing with the U.S. Postal Service and correspondence placed for collection and mailing would be deposited in the U.S. Postal Service at Menlo Park, California, with postage thereon fully prepaid, that same day in the ordinary course of business.

☐

(VIA PERSONAL DELIVERY -- CCP §§ 1011, 2015.5) By placing a true copy thereof enclosed in a sealed envelope(s), addressed as below, and causing each envelope(s) to be hand delivered on that day by _____, in the ordinary course of my firm's business practice.

☐

(VIA FACSIMILE -- CCP §§ 1013(e), 2015.5, CRC 2008) By arranging for facsimile transmission from facsimile number 650-325-3116 to the facsimile number(s) listed below prior to 5:00 p.m. I am readily familiar with my firm's business practice of collection and processing of correspondence via facsimile transmission(s) and any such correspondence would be transmitted in the ordinary course of business. The facsimile transmission(s) was reported as complete and without error, and a copy of the transmission report is attached.

☐

(VIA OVERNIGHT MAIL/COURIER - CCP §§1013(c), 2015.5) By delivering a true copy thereof enclosed in a sealed envelope(s), addressed as below, to an authorized courier or driver authorized by Federal Express, an express service carrier to receive documents, in an envelope or package designed by Federal Express with delivery fees paid or provided for, addressed as below. I am familiar with my firm's business practice of collection and processing correspondence for overnight mail or overnight courier service, and my correspondence placed for collection for overnight delivery would, in the ordinary course of business, be delivered to an authorized courier or driver authorized by the overnight mail carrier to receive documents, with delivery fees paid or provided for, that same day, for delivery on the following business day.

Harris L. Winns
2610 Sierra Vista Court
San Jose, CA 95116
Tele: 408-835-8872

In Pro Per

1 Nancy L. McCoy, Esq.
2 Cortney L. McDevitt, Esq.
3 Strazulo Fitzgerald, LLP
4 275 Battery Street
5 Suite 200
6 San Francisco, CA 94111
7 Tele: 415-394-9500
8 FAX: 415-394-9501

9 Attorneys for Defendants Blakely Sokoloff Taylor &
10 Zafman, LLP, Anthony Intil, Candy Mielke, Michael
11 Mallie, John P. Ward, Ed Taylor, Dan Devos, Diane
12 Robson and Lester Vincent

13 I declare that I am employed in the office of a member of the bar of this court at whose
14 direction the service was made. Executed on September 4, 2008, at Menlo Park, California.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
s/DEBBIE RIFFEL
DEBBIE RIFFEL

(ENDORSED)
FILED

APR 8 8 21 AM '02

SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY

C. AMBER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

CV 806829

BLAKELY SOKOLOFF TAYLOR & ZAFMAN,
LLP,

Plaintiff,

v.

HARRIS WINNS,

Defendant.

Case No.

[PROPOSED] TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT BE ISSUED

Date: April 8, 2002

Time: 8:15 a.m.

Place: Room 107

To: Defendant HARRIS WINNS and his attorney:

Based on: (1) the Complaint filed against you by plaintiff BLAKELY SOKOLOFF
TAYLOR & ZAFMAN, LLP, (hereinafter "BSTZ") for Injunction for Trespass to Chattels,
Conversion, Misappropriation of Trade Secrets, Unfair Competition and Threat of Violence; (2)
Plaintiff's Ex Parte Application for Temporary Restraining Order and Order to Show Cause Why a
Preliminary Injunction Should Not Be Issued; (3) the Memorandum of Points and Authorities in
support of the Ex Parte Application; and (4) the supporting declarations of Candace Mielke,
Anthony Intil, Daniel D. Domoziak, Dr. Barbara Lambert, Karen Wilson, Lester J. Vincent and
Charles H. Wall, all served and filed herein, it appears to the satisfaction of the Court that: (1) this

1 is a proper case for issuance of an order to show cause why a preliminary injunction should not be
2 issued as described below and (2) unless the temporary restraining order prayed for in such
3 complaint be granted, great and irreparable injury will result to BSTZ before the matter can be
4 heard on notice, and good cause appearing therefore:

5
6 YOU ARE HEREBY ORDERED TO SHOW CAUSE at 8:45 a.m. on April 6, 2002
7 2002, or as soon thereafter as the matter may be heard in Department 4 of the Superior Court of
8 California in and for the County of Santa Clara located at 191 North First Street, San Jose,
9 California, why you, and anyone acting on your behalf, in association with you, or in concert with
10 you, should not be restrained, enjoined and directed as follows pending trial on the Complaint
11 herein:

12 a. enjoined from divulging, disclosing, using or communicating to anyone at
13 any time (either directly or indirectly) in any manner whatsoever any of BSTZ's trade secrets or
14 confidential or proprietary business information;

15
16 b. enjoined from accessing BSTZ's computer networks from any location at
17 any time;

18 c. enjoined from sending any unsolicited e-mail correspondence to BSTZ;

19 d. enjoined from following or stalking, or calling or sending correspondence to
20 BSTZ employees Anthony Intil, Candace Mielke, Karen Wilson and Lester J. Vincent;

21 e. directed to stay at least 300 yards from BSTZ's employees Anthony Intil,
22 Candace Mielke, Karen Wilson and Lester J. Vincent's places of residence and place of
23 employment;

24
25 f. directed to return to BSTZ all originals and all copies of documents and
26 tangible things containing BSTZ's trade secrets or confidential or proprietary business
27 information;

g. ordered to return to BSTZ the floppy disk containing the Identification files of all of its attorneys and staff members; and

h. enjoined from deleting, damaging, and destroying any and all electronic data stored on electronic media or in peripheral devices including, but not limited to, computer hard drives, laptop hard drives, palm computers, copiers, printers, fax machines, backup tapes, JAZ drives, ZIP drives, CDs, diskettes, etc. in which electronic data resides as active, archived, residual or backed-up, whether in his custody and control or at any other location.

This Order to Show Cause shall be served on Defendant no later than April 10, 2002 by the following means of service: personal. Proof of such service shall be filed with the Court and delivered in the manner provided in Code of Civil Procedure Section 527.

The following briefing schedule shall apply: Any opposition papers to the Order to Show Cause shall be filed and served on Plaintiff's counsel no later than April 22, 2002. Any reply papers shall be filed and served on Defendant no later than April 24, 2002.

PENDING HEARING on the above Order to Show Cause, you, and anyone acting on your behalf, in association with you, or in concert with you ARE HEREBY RESTRAINED AND ORDERED AS FOLLOWS:

a. restrained from divulging, disclosing, using or communicating to anyone at any time (either directly or indirectly) in any manner whatsoever any of BSTZ's trade secrets or confidential or proprietary business information;

b. restrained from accessing BSTZ's computer networks from any location at any time;

c. restrained from sending any unsolicited e-mail correspondence to BSTZ;

d. restrained from following or stalking, or calling or sending correspondence to BSTZ employees Anthony Intil, Candace Mielke, Karen Wilson and Lester J. Vincent;

1 e. directed to stay at least 300 yards from BSTZ's employees Anthony Intil,
2 Candace Mielke, Karen Wilson and Lester J. Vincent's places of residence and place of
3 employment;

4 f. directed to return to BSTZ all originals and all copies of documents and
5 tangible things containing BSTZ's trade secrets or confidential or proprietary business
6 information;

7 g. directed to return to BSTZ the floppy disk containing the Identification files
8 of all of its attorneys and staff members;

9 h. restrained damaging, and destroying any and all electronic data stored on
10 electronic media or in peripheral devices including, but not limited to, computer hard drives,
11 laptop hard drives, palm computers, copiers, printers, fax machines, backup tapes, JAZ drives, ZIP
12 drives, CDs, diskettes, etc. in which electronic data resides as active, archived, residual or
13 backed-up, whether in his custody and control or at any other location;

14 i. directed to immediately make available for inspection and copying by third
15 party investigative consulting firm Noesis, any and all electronic devices capable of storing
16 electronic data on electronic media or in peripheral devices including, but not limited to, computer
17 hard drives, laptop hard drives, palm computers, copiers, printers, fax machines, backup tapes,
18 JAZ drives, ZIP drives, CDs, diskettes, etc. in which electronic data resides as active, archived,
19 residual or backed-up, whether in his custody and control or at any other location. The copied
20 electronic data will be lodged with the Court in a sealed envelope bearing the case name and case
21 caption to await further order of this court.
22
23
24

25 ///

26 ///

27 ///

1 The Temporary Restraining Order issued herein shall expire on May 6, 2002.

2 IT IS SO ORDERED.

3 Dated: April 10, 2002

4 
Judge of the Superior Court

5 MARY JO LEVINGER

LAURA E. INNES, BAR NO. 124259
 DANIEL D. DOMOZICK, BAR NO. 206976
 SIMPSON, GARRITY & INNES
 Professional Corporation
 651 Gateway Boulevard, Suite 1050
 South San Francisco, CA 94080
 Telephone: (650) 615-4860
 Fax: (650) 615-4861

Attorneys for Plaintiff
 BLAKELY SOKOLOFF TAYLOR & ZAFMAN, LLP

ENDORSED

2002 MAY -6 AM 9: 03

KIRI TORRE, CEO
 SUPERIOR COURT OF CA.
 CO. OF SANTA CLARA

BY _____ DEPUTY

CONNIE BURTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SANTA CLARA

BLAKELY SOKOLOFF TAYLOR & ZAFMAN, LLP,

Plaintiff,

v.

HARRIS WINNS,

Defendant.

) Case No. CV806829

) **STIPULATED ORDER FOR**
) **INJUNCTION**

1. This order shall expire on April 30, 2005.

2. Defendant Harris L. Winns (Defendant") is an African-American male, five feet six inches tall, approximately 170 pounds, bald, brown eyes, 36 years old, born October 10, 1965.

3. Defendant denies jointly and severally, conjunctively and disjunctively each and every allegation stated in the Complaint herein. Defendant denies any wrongdoing or liability as to any cause of action stated therein. Defendant's stipulation hereto shall not be deemed an admission of liability.

4. The parties stipulate to entry of an Order for Injunction providing that:

a. Defendant, his agents, servants and all persons acting in concert or participation with him must not divulge, disclose, use or communicate to anyone at any time (either directly or

(RAWDOX\CLIENTS\1435917\00021506.DOC)

STIPULATED ORDER FOR INJUNCTION

- 1 -

ORIGINAL

EXHIBIT B

1 indirectly) in any manner whatsoever any of Blakely Sokoloff Taylor & Zafman (BSTZ)'s trade
2 secrets or confidential or proprietary business information.

3 b. Defendant, and anyone acting on his behalf, in association with him, or in concert
4 with him must not access BSTZ's computer networks from any location at any time;

5 c. Defendant, and anyone acting on his behalf, in association with him, or in concert
6 with him must not send any unsolicited e-mail correspondence to BSTZ or its employees;

7 d. Defendant, and anyone acting on his behalf, in association with him, or in concert
8 with him must not follow or stalk, call or send correspondence to BSTZ employees Anthony Intil,
9 Candace Mielke, Karen Wilson and Lester J. Vincent;

10 e. Defendant, and anyone acting on his behalf, in association with him, or in concert
11 with him, must stay at least 300 yards from BSTZ's employees Anthony Intil, Candace Mielke,
12 Karen Wilson and Lester J. Vincent's places of residence and place of employment;

13 f. Defendant represents and warrants that neither he, nor anyone acting on his behalf,
14 in association with him, or in concert with him, has in his possession, custody or control, originals
15 or any copies of documents and tangible things containing BSTZ's trade secrets or confidential or
16 proprietary business information including, without limitation, the BSTZ the floppy disk
17 containing the Identification files of all of its attorneys and staff members;

18 5. Violation of this order is a misdemeanor, punishable by a \$1,000.00 fine, one year
19 in jail, or both, or may be punishable as a felony. This order shall be enforced by all law
20 enforcement officers in the State of California. Any person subject to a restraining order is
21 prohibited from obtaining or purchasing or attempting to obtain or purchase a firearm by Penal
22 Code section 12021. Such conduct may be a felony and punishable by a \$1,000.00 fine and
23 imprisonment.

6. By the close of business on the date of this order, the clerk of the court shall mail a copy of this order and any proof of service to the law enforcement agencies listed below as follows:

Santa Clara County Sheriff's Office - Civil Division
55 West Younger Avenue, 2nd Floor
San Jose, CA 95110-1722

Sunnyvale Police Department
Public Safety Headquarters
700 All America Way
Sunnyvale, CA 94088-3707


Mountain View Police Department
1000 Villa Street
Mountain View, CA 94041; and

Redwood City Police Department
1301 Maple Street
Redwood City, CA 94063

Palo Alto Police Department
275 Forest Avenue
Palo Alto, CA 94301


7. This order is effective when made. The law enforcement agencies shall enforce the order immediately upon receipt. It is enforceable anywhere in California by any law enforcement agency that has received the order or is shown a copy of the order. If proof of service on the restrained person has not been received, the law enforcement agency shall advise the restrained person of the terms of the order and then shall enforce it.

Dated: April 25, 2002


Harris L. Winns

LAW OFFICES OF MARION A. WHITTAKER

Dated: April 25, 2002

By: 
Marion A. Whittaker
Attorney for Defendant Harris L. Winns

1
2 Date: April 2, 2002

SIMPSON, GARRITY & INNES
Professional Corporation

3
4 By: 

LAURA E. INNES, BAR NO. 124259
DANIEL E. DOMOZICK, BAR NO. 206976
Attorneys for Plaintiff
BLAKELY SOKOLOFF TAYLOR &
ZAFMAN, LLP

5
6
7 SO ORDERED:

8 Dated: May 6, 2002

9
10 By: 

JUDGE OF THE SUPERIOR COURT

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a copy of the foregoing was mailed first class, postage prepaid, in a sealed envelope addressed as shown in item 6, and that the mailing of the foregoing and execution of this certificate occurred at: _____, California, on _____:

Deputy Clerk, by _____